

107TH CONGRESS
1ST SESSION

S. 1284

To prohibit employment discrimination on the basis of sexual orientation.

IN THE SENATE OF THE UNITED STATES

JULY 31, 2001

Mr. KENNEDY (for himself, Mr. SPECTER, Mr. JEFFORDS, Mr. LIEBERMAN, Mr. DASCHLE, Mr. AKAKA, Mr. BAUCUS, Mr. BAYH, Mr. BIDEN, Mr. BINGAMAN, Mrs. BOXER, Ms. CANTWELL, Mr. CARPER, Mr. CHAFEE, Mr. CLELAND, Mrs. CLINTON, Mr. CORZINE, Mr. DAYTON, Mr. DODD, Mr. DURBIN, Mr. EDWARDS, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. HARKIN, Mr. INOUE, Mr. KERRY, Mr. KOHL, Ms. LANDRIEU, Mr. LEAHY, Mr. LEVIN, Ms. MIKULSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mr. REED, Mr. REID, Mr. SARBANES, Mr. SCHUMER, Mr. SMITH of Oregon, Ms. STABENOW, Mr. TORRICELLI, Mr. WELLSTONE, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To prohibit employment discrimination on the basis of sexual orientation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Employment Non-Dis-
5 crimination Act of 2001”.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to provide a comprehensive Federal prohibi-
4 tion of employment discrimination on the basis of
5 sexual orientation;

6 (2) to provide meaningful and effective rem-
7 edies for employment discrimination on the basis of
8 sexual orientation; and

9 (3) to invoke congressional powers, including
10 the powers to enforce the 14th amendment to the
11 Constitution, and to regulate interstate commerce
12 and provide for the general welfare pursuant to sec-
13 tion 8 of article I of the Constitution, in order to
14 prohibit employment discrimination on the basis of
15 sexual orientation.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) COMMISSION.—The term “Commission”
19 means the Equal Employment Opportunity Commis-
20 sion.

21 (2) COVERED ENTITY.—The term “covered en-
22 tity” means an employer, employment agency, labor
23 organization, or joint labor-management committee.

24 (3) EMPLOYEE.—

25 (A) IN GENERAL.—The term “employee”
26 means—

1 (i) an employee (as defined in section
2 701(f) of the Civil Rights Act of 1964 (42
3 U.S.C. 2000e(f));

4 (ii) a Presidential appointee or State
5 employee to which section 302(a)(1) of the
6 Government Employee Rights Act of 1991
7 (2 U.S.C. 1202(a)(1)) applies;

8 (iii) a covered employee, as defined in
9 section 101 of the Congressional Account-
10 ability Act of 1995 (2 U.S.C. 1301) or sec-
11 tion 411(c) of title 3, United States Code;
12 or

13 (iv) an employee or applicant to which
14 section 717(a) of the Civil Rights Act of
15 1964 (42 U.S.C. 2000e–16(a)) applies.

16 (B) EXCEPTION.—The term does not in-
17 clude a volunteer who receives no compensation.

18 (4) EMPLOYER.—The term “employer”
19 means—

20 (A) a person engaged in an industry affect-
21 ing commerce (as defined in section 701(h) of
22 the Civil Rights Act of 1964 (42 U.S.C.
23 2000e(h)) who has 15 or more employees (as
24 defined in subparagraphs (A)(i) and (B) of
25 paragraph (3)) for each working day in each of

1 20 or more calendar weeks in the current or
2 preceding calendar year, and any agent of such
3 a person, but does not include a bona fide pri-
4 vate membership club (other than a labor orga-
5 nization) that is exempt from taxation under
6 section 501(c) of the Internal Revenue Code of
7 1986;

8 (B) an employing authority to which sec-
9 tion 302(a)(1) of the Government Employee
10 Rights Act of 1991 applies;

11 (C) an employing office, as defined in sec-
12 tion 101 of the Congressional Accountability
13 Act of 1995 or section 411(c) of title 3, United
14 States Code; or

15 (D) an entity to which section 717(a) of
16 the Civil Rights Act of 1964 applies.

17 (5) EMPLOYMENT AGENCY.—The term “em-
18 ployment agency” has the meaning given the term in
19 section 701(c) of the Civil Rights Act of 1964 (42
20 U.S.C. 2000e(c)).

21 (6) LABOR ORGANIZATION.—The term “labor
22 organization” has the meaning given the term in
23 section 701(d) of the Civil Rights Act of 1964 (42
24 U.S.C. 2000e(d)).

1 (7) PERSON.—The term “person” has the
2 meaning given the term in section 701(a) of the
3 Civil Rights Act of 1964 (42 U.S.C. 2000e(a)).

4 (8) RELIGIOUS ORGANIZATION.—The term “re-
5 ligious organization” means—

6 (A) a religious corporation, association, or
7 society; or

8 (B) a school, college, university, or other
9 educational institution or institution of learn-
10 ing, if—

11 (i) the institution is in whole or sub-
12 stantial part controlled, managed, owned,
13 or supported by a religion, religious cor-
14 poration, association, or society; or

15 (ii) the curriculum of the institution is
16 directed toward the propagation of a reli-
17 gion.

18 (9) SEXUAL ORIENTATION.—The term “sexual
19 orientation” means homosexuality, bisexuality, or
20 heterosexuality, whether the orientation is real or
21 perceived.

22 (10) STATE.—The term “State” has the mean-
23 ing given the term in section 701(i) of the Civil
24 Rights Act of 1964 (42 U.S.C. 2000e(i)).

1 **SEC. 4. DISCRIMINATION PROHIBITED.**

2 (a) EMPLOYER PRACTICES.—It shall be an unlawful
3 employment practice for an employer—

4 (1) to fail or refuse to hire or to discharge any
5 individual, or otherwise to discriminate against any
6 individual with respect to the compensation, terms,
7 conditions, or privileges of employment of the indi-
8 vidual, because of such individual's sexual orienta-
9 tion; or

10 (2) to limit, segregate, or classify the employees
11 or applicants for employment of the employer in any
12 way that would deprive or tend to deprive any indi-
13 vidual of employment or otherwise adversely affect
14 the status of the individual as an employee, because
15 of such individual's sexual orientation.

16 (b) EMPLOYMENT AGENCY PRACTICES.—It shall be
17 an unlawful employment practice for an employment agen-
18 cy to fail or refuse to refer for employment, or otherwise
19 to discriminate against, any individual because of the sex-
20 ual orientation of the individual or to classify or refer for
21 employment any individual on the basis of the sexual ori-
22 entation of the individual.

23 (c) LABOR ORGANIZATION PRACTICES.—It shall be
24 an unlawful employment practice for a labor
25 organization—

1 (1) to exclude or to expel from its membership,
2 or otherwise to discriminate against, any individual
3 because of the sexual orientation of the individual;

4 (2) to limit, segregate, or classify its member-
5 ship or applicants for membership, or to classify or
6 fail or refuse to refer for employment any individual,
7 in any way that would deprive or tend to deprive any
8 individual of employment, or would limit such em-
9 ployment or otherwise adversely affect the status of
10 the individual as an employee or as an applicant for
11 employment, because of such individual's sexual ori-
12 entation; or

13 (3) to cause or attempt to cause an employer to
14 discriminate against an individual in violation of this
15 section.

16 (d) TRAINING PROGRAMS.—It shall be an unlawful
17 employment practice for any employer, labor organization,
18 or joint labor-management committee controlling appren-
19 ticeship or other training or retraining, including on-the-
20 job training programs, to discriminate against any indi-
21 vidual because of the sexual orientation of the individual
22 in admission to, or employment in, any program estab-
23 lished to provide apprenticeship or other training.

24 (e) ASSOCIATION.—An unlawful employment practice
25 described in any of subsections (a) through (d) shall be

1 considered to include an action described in that sub-
 2 section, taken against an individual based on the sexual
 3 orientation of a person with whom the individual associ-
 4 ates or has associated.

5 (f) DISPARATE IMPACT.—Notwithstanding any other
 6 provision of this Act, the fact that an employment practice
 7 has a disparate impact, as the term “disparate impact”
 8 is used in section 703(k) of the Civil Rights Act of 1964
 9 (42 U.S.C. 2000e–2(k)), on the basis of sexual orientation
 10 does not establish a prima facie violation of this Act.

11 **SEC. 5. RETALIATION AND COERCION PROHIBITED.**

12 (a) RETALIATION.—A covered entity shall not dis-
 13 criminate against an individual because such individual
 14 opposed any act or practice prohibited by this Act or be-
 15 cause such individual made a charge, assisted, testified,
 16 or participated in any manner in an investigation, pro-
 17 ceeding, or hearing under this Act.

18 (b) COERCION.—A person shall not coerce, intimi-
 19 date, threaten, or interfere with any individual in the exer-
 20 cise or enjoyment of, or on account of such individual’s
 21 having exercised, enjoyed, or assisted in or encouraged the
 22 exercise or enjoyment of, any right granted or protected
 23 by this Act.

1 **SEC. 6. BENEFITS.**

2 This Act does not apply to the provision of employee
3 benefits to an individual for the benefit of the domestic
4 partner of such individual.

5 **SEC. 7. COLLECTION OF STATISTICS PROHIBITED.**

6 The Commission shall not collect statistics on sexual
7 orientation from covered entities, or compel the collection
8 of such statistics by covered entities.

9 **SEC. 8. QUOTAS AND PREFERENTIAL TREATMENT PROHIB-**
10 **ITED.**

11 (a) QUOTAS.—A covered entity shall not adopt or im-
12 plement a quota on the basis of sexual orientation.

13 (b) PREFERENTIAL TREATMENT.—A covered entity
14 shall not give preferential treatment to an individual on
15 the basis of sexual orientation.

16 (c) ORDERS AND CONSENT DECREES.—Notwith-
17 standing any other provision of this Act, an order or con-
18 sent decree entered for a violation of this Act may not
19 include a quota, or preferential treatment to an individual,
20 based on sexual orientation.

21 **SEC. 9. RELIGIOUS EXEMPTION.**

22 This Act shall not apply to a religious organization.

23 **SEC. 10. NONAPPLICATION TO MEMBERS OF THE ARMED**
24 **FORCES; VETERANS' PREFERENCES.**

25 (a) ARMED FORCES.—

1 (1) EMPLOYMENT.—In this Act, the term “em-
2 ployment” does not apply to the relationship be-
3 tween the United States and members of the Armed
4 Forces.

5 (2) ARMED FORCES.—In paragraph (1), the
6 term “Armed Forces” means the Army, Navy, Air
7 Force, Marine Corps, and Coast Guard.

8 (b) VETERANS’ PREFERENCES.—This Act does not
9 repeal or modify any Federal, State, territorial, or local
10 law creating a special right or preference concerning em-
11 ployment for a veteran.

12 **SEC. 11. CONSTRUCTION.**

13 (a) NONPRIVATE CONDUCT.—Nothing in this Act
14 shall be construed to prohibit a covered entity from enforce-
15 ing rules regarding nonprivate sexual conduct, if the rules
16 of conduct are designed for, and uniformly applied to, all
17 individuals regardless of sexual orientation.

18 (b) ASSOCIATION.—Nothing in this Act shall be con-
19 strued to prohibit any association, or infringe upon any
20 right of association, guaranteed by the first amendment
21 to the Constitution, of any nonprofit, voluntary member-
22 ship organization.

23 **SEC. 12. ENFORCEMENT.**

24 (a) ENFORCEMENT POWERS.—With respect to the
25 administration and enforcement of this Act in the case of

1 a claim alleged by an individual for a violation of this
2 Act—

3 (1) the Commission shall have the same powers
4 as the Commission has to administer and enforce—

5 (A) title VII of the Civil Rights Act of
6 1964 (42 U.S.C. 2000e et seq.); or

7 (B) sections 302 and 304 of the Govern-
8 ment Employee Rights Act of 1991 (2 U.S.C.
9 1202 and 1220);

10 in the case of a claim alleged by such individual for
11 a violation of such title, or of section 302(a)(1) of
12 the Government Employee Rights Act of 1991 (2
13 U.S.C. 1202(a)(1)), respectively;

14 (2) the Librarian of Congress shall have the
15 same powers as the Librarian of Congress has to ad-
16 minister and enforce title VII of the Civil Rights Act
17 of 1964 (42 U.S.C. 2000e et seq.) in the case of a
18 claim alleged by such individual for a violation of
19 such title;

20 (3) the Board (as defined in section 101 of the
21 Congressional Accountability Act of 1995 (2 U.S.C.
22 1301)) shall have the same powers as the Board has
23 to administer and enforce the Congressional Ac-
24 countability Act of 1995 (2 U.S.C. 1301 et seq.) in
25 the case of a claim alleged by such individual for a

1 violation of section 201(a)(1) of such Act (2 U.S.C.
2 1311(a)(1));

3 (4) the Attorney General shall have the same
4 powers as the Attorney General has to administer
5 and enforce—

6 (A) title VII of the Civil Rights Act of
7 1964 (42 U.S.C. 2000e et seq.); or

8 (B) sections 302 and 304 of the Govern-
9 ment Employee Rights Act of 1991 (2 U.S.C.
10 1202 and 1220);

11 in the case of a claim alleged by such individual for
12 a violation of such title, or of section 302(a)(1) of
13 the Government Employee Rights Act of 1991 (2
14 U.S.C. 1202(a)(1)), respectively;

15 (5) the President, the Commission, and the
16 Merit Systems Protection Board shall have the same
17 powers as the President, the Commission, and the
18 Board, respectively, have to administer and enforce
19 chapter 5 of title 3, United States Code, in the case
20 of a claim alleged by such individual for a violation
21 of section 411 of such title;

22 (6) a court of the United States shall have the
23 same jurisdiction and powers as the court has to
24 enforce—

1 (A) title VII of the Civil Rights Act of
2 1964 (42 U.S.C. 2000e et seq.) in the case of
3 a claim alleged by such individual for a viola-
4 tion of such title;

5 (B) sections 302 and 304 of the Govern-
6 ment Employee Rights Act of 1991 (2 U.S.C.
7 1202 and 1220) in the case of a claim alleged
8 by such individual for a violation of section
9 302(a)(1) of such Act (2 U.S.C. 1202(a)(1));

10 (C) the Congressional Accountability Act
11 of 1995 (2 U.S.C. 1301 et seq.) in the case of
12 a claim alleged by such individual for a viola-
13 tion of section 201(a)(1) of such Act (2 U.S.C.
14 1311(a)(1)); and

15 (D) chapter 5 of title 3, United States
16 Code, in the case of a claim alleged by such in-
17 dividual for a violation of section 411 of such
18 title.

19 (b) PROCEDURES AND REMEDIES.—The procedures
20 and remedies applicable to a claim alleged by an individual
21 for a violation of this Act are—

22 (1) the procedures and remedies applicable for
23 a violation of title VII of the Civil Rights Act of
24 1964 (42 U.S.C. 2000e et seq.) in the case of a

1 claim alleged by such individual for a violation of
2 such title;

3 (2) the procedures and remedies applicable for
4 a violation of section 302(a)(1) of the Government
5 Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1))
6 in the case of a claim alleged by such individual for
7 a violation of such section;

8 (3) the procedures and remedies applicable for
9 a violation of section 201(a)(1) of the Congressional
10 Accountability Act of 1995 (2 U.S.C. 1311(a)(1)) in
11 the case of a claim alleged by such individual for a
12 violation of such section; and

13 (4) the procedures and remedies applicable for
14 a violation of section 411 of title 3, United States
15 Code, in the case of a claim alleged by such indi-
16 vidual for a violation of such section.

17 (c) OTHER APPLICABLE PROVISIONS.—With respect
18 to a claim alleged by a covered employee (as defined in
19 section 101 of the Congressional Accountability Act of
20 1995 (2 U.S.C. 1301)) for a violation of this Act, title
21 III of the Congressional Accountability Act of 1995 (2
22 U.S.C. 1381 et seq.) shall apply in the same manner as
23 such title applies with respect to a claim alleged by such
24 a covered employee for a violation of section 201(a)(1) of
25 such Act (2 U.S.C. 1311(a)(1)).

1 (d) PROHIBITION OF AFFIRMATIVE ACTION.—Not-
2 withstanding any other provision of this section, affirma-
3 tive action for a violation of this Act may not be imposed.
4 Nothing in this section shall prevent the granting of relief
5 to any individual who suffers a violation of such individ-
6 ual’s rights provided in this Act.

7 **SEC. 13. STATE AND FEDERAL IMMUNITY.**

8 (a) STATE IMMUNITY.—A State shall not be immune
9 under the 11th amendment to the Constitution from a suit
10 described in subsection (b) and brought in a Federal court
11 of competent jurisdiction for a violation of this Act.

12 (b) REMEDIES FOR STATE EMPLOYEES.—

13 (1) IN GENERAL.—

14 (A) WAIVER.—A State’s receipt or use of
15 Federal financial assistance for any program or
16 activity of a State shall constitute a waiver of
17 sovereign immunity, under the 11th amendment
18 to the Constitution or otherwise, to a suit
19 brought by an employee or applicant for em-
20 ployment of that program or activity under this
21 Act for a remedy authorized under subsection
22 (c).

23 (B) DEFINITION.—In this paragraph, the
24 term “program or activity” has the meaning

1 given the term in section 606 of the Civil
2 Rights Act of 1964 (42 U.S.C. 2000d–4a).

3 (2) OFFICIALS.—An official of a State may be
4 sued in the official capacity of the official by any
5 employee or applicant for employment who has com-
6 plied with the applicable procedures of section 12,
7 for equitable relief that is authorized under this Act.
8 In such a suit the court may award to the prevailing
9 party those costs authorized by section 722 of the
10 Revised Statutes (42 U.S.C. 1988).

11 (3) EFFECTIVE DATE.—With respect to a par-
12 ticular program or activity, paragraphs (1) and (2)
13 apply to conduct occurring on or after the day, after
14 the date of enactment of this Act, on which a State
15 first receives or uses Federal financial assistance for
16 that program or activity.

17 (c) REMEDIES AGAINST THE UNITED STATES AND
18 THE STATES.—Notwithstanding any other provision of
19 this Act, in an action or administrative proceeding against
20 the United States or a State for a violation of this Act,
21 remedies (including remedies at law and in equity, and
22 interest) are available for the violation to the same extent
23 as the remedies are available for a violation of title VII
24 of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.)
25 by a private entity, except that—

- 1 (1) punitive damages are not available; and
- 2 (2) compensatory damages are available to the
- 3 extent specified in section 1977A(b) of the Revised
- 4 Statutes (42 U.S.C. 1981a(b)).

5 **SEC. 14. ATTORNEYS' FEES.**

6 Notwithstanding any other provision of this Act, in
7 an action or administrative proceeding for a violation of
8 this Act, an entity described in section 12(a) (other than
9 paragraph (4) of such section), in the discretion of the
10 entity, may allow the prevailing party, other than the
11 Commission or the United States, a reasonable attorney's
12 fee (including expert fees) as part of the costs. The Com-
13 mission and the United States shall be liable for the costs
14 to the same extent as a private person.

15 **SEC. 15. POSTING NOTICES.**

16 A covered entity who is required to post notices de-
17 scribed in section 711 of the Civil Rights Act of 1964 (42
18 U.S.C. 2000e-10) shall post notices for employees, appli-
19 cants for employment, and members, to whom the provi-
20 sions specified in section 12(b) apply, that describe the
21 applicable provisions of this Act in the manner prescribed
22 by, and subject to the penalty provided under, section 711
23 of the Civil Rights Act of 1964.

1 **SEC. 16. REGULATIONS.**

2 (a) IN GENERAL.—Except as provided in subsections
3 (b), (c), and (d), the Commission shall have authority to
4 issue regulations to carry out this Act.

5 (b) LIBRARIAN OF CONGRESS.—The Librarian of
6 Congress shall have authority to issue regulations to carry
7 out this Act with respect to employees and applicants for
8 employment of the Library of Congress.

9 (c) BOARD.—The Board referred to in section
10 12(a)(3) shall have authority to issue regulations to carry
11 out this Act, in accordance with section 304 of the Con-
12 gressional Accountability Act of 1995 (2 U.S.C. 1384),
13 with respect to covered employees, as defined in section
14 101 of such Act (2 U.S.C. 1301).

15 (d) PRESIDENT.—The President shall have authority
16 to issue regulations to carry out this Act with respect to
17 covered employees, as defined in section 411(c) of title 3,
18 United States Code.

19 **SEC. 17. RELATIONSHIP TO OTHER LAWS.**

20 This Act shall not invalidate or limit the rights, rem-
21 edies, or procedures available to an individual claiming
22 discrimination prohibited under any other Federal law or
23 any law of a State or political subdivision of a State.

24 **SEC. 18. SEVERABILITY.**

25 If any provision of this Act, or the application of the
26 provision to any person or circumstance, is held to be in-

1 valid, the remainder of this Act and the application of the
2 provision to any other person or circumstance shall not
3 be affected by the invalidity.

4 **SEC. 19. EFFECTIVE DATE.**

5 This Act shall take effect 60 days after the date of
6 enactment of this Act and shall not apply to conduct oc-
7 ccurring before the effective date.

